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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/938,997	08/27/2001	Daniel B. Lodge	5108-6	3441
34678	7590	02/03/2004	EXAMINER	
NORMAN E. LEHRER, P.C. 1205 NORTH KINGS HIGHWAY CHERRY HILL, NJ 08034			EVANS, GEOFFREY S	
			ART UNIT	PAPER NUMBER
			1725	

DATE MAILED: 02/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/938,997

Applicant(s)

LODGE, DANIEL B.

Examiner

Geoffrey S Evans

Art Unit

1725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) 1 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 20020108 6) ☐ Other:

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### DETAILED ACTION

1. Claim 1 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made **without** traverse in Paper No. 20031229.

2. The Art Unit location of your application in the USPTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 1725.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Arfsten et al. in U.S. Patent No. 5,409,742 A in view of Wijnschenk et al. in U.S. Patent No.

6,270,728 B1 and Zaglio in EP 404,732 and Sato in U.S. Patent No. 6,681,055 B1.

Arfsten et al. teaches laser marking glass articles after applying a layer of ceramic paint (e.g. see column 1, line 10). Arfsten et al. does not disclose that laser etching a data matrix and Arfsten et al. does not disclose marking the bottom end of a glass vial.

Wijnschenk et al. teaches marking the bottom of a test tube, i.e. vial so that it is machine-readable. Zaglio teaches that test tubes (i.e. vials) can be made of glass. Sato teaches laser marking a data matrix code (see column 2, lines 44-50) and that this method is effective for forming a small two-dimensional code whose side is 1 mm long

(see column 9, lines 10-13). It would have been obvious to adapt Arfsten et al. in view of Wijnschenk et al., Zaglio and Sato to laser mark the bottom of glass vials with a data matrix code so that only a small area of the vial is required for a machine-readable code.

5. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schneider in US 2002/0102362 A1 in view of Sato in U.S. Patent No. 6,681,055 B1 and Mathus et al. in U.S. Patent No. 6,372,293 B1. Schneider in US 2002/0102362 A1 discloses making laboratory containers such as a glass vial by applying a ceramic based paint (see paragraph 15), and etching the label area with a laser. Schneider however discloses using a bar code instead of a data matrix code. Sato teaches laser marking a data matrix code (see column 2, lines 44-50) instead of a bar code because it has a higher data amount per unit area (see column 1, lines 19-21). Mathus et al. teaches placing a code on the bottom of a test tube. It would have been obvious to adapt Schneider in view of Sato to increase the amount of data in the code per unit area (and thus allow a smaller area to be used for the code) and further to adapt Schneider in view of Mathus et al. to place it at the bottom end so that it is easily machine readable.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Shinoda in U.S. Patent No. 6,227,394 discloses laser marking a two-dimensional matrix code on a glass bulb for a cathode ray tube.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Geoffrey S Evans whose telephone number is (571)-

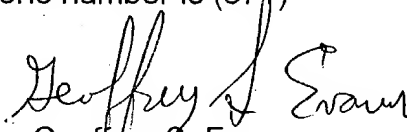
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272-1174. The examiner can normally be reached on Mon-Fri 6:30AM to 4:00 PM, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Dunn can be reached on (571)-272-1171. The fax phone number for the organization where this application or proceeding is assigned is (703)-872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571)-272-1300.

GSE

  
Geoffrey S. Evans  
Primary Examiner  
Group 1700